

# **Exhibit 22**

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 U.S. COMMODITY FUTURES )  
5 TRADING COMMISSION, )

6 )  
7 Plaintiff, )

8 )  
9 vs. ) 13 Civ 1174 VSB

10 ) ECF Case

11 WILLIAM BYRNES, )  
12 CHRISTOPHER CURTIN, THE )

13 NEW YORK MERCANTILE )  
14 EXCHANGE, INC., )

15 )  
16 Defendants. )

17 \_\_\_\_\_ )

18  
19 DEPOSITION OF HENDRICK BESSEMBINDER

20 New York, New York

21 May 10, 2016

22  
23 Reported by:

24 MARY F. BOWMAN, RPR, CRR

25 JOB NO. 106200

1  
2  
3  
4  
5 May 10, 2016

6 9:45 a.m.  
7  
8

9 Deposition of HENDRICK

10 BESSEMBINDER, held at the offices of  
11 Skadden, Arps, Slate, Meagher & Flom, 4 Times Square,  
12 New York, New York, before Mary F. Bowman, a  
13 Registered Professional Reporter, Certified  
14 Realtime Reporter, and Notary Public of the  
15 State of New Jersey.  
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1                               Bessembinder

2       testifying in federal court in Chicago, you  
3       were testifying in a matter involving  
4       allegations that a market participant was  
5       engaging in aberrant behavior, fair?

6           A.       Fair enough.

7           Q.       You told Judge St. Eve that you  
8       were an expert in market microstructure,  
9       correct?

10          A.       I believe I probably did, yes.

11          Q.       And you told her that you were  
12       not a trader, correct?

13          A.       That's correct. Still true this  
14       week.

15          Q.       Still true. I was going to cover  
16       that period.

17                   And you told her that you were  
18       not an expert in the subjective factors  
19       that drove trader behavior, correct?

20          A.       I don't recall if I used that  
21       phrase.

22          Q.       But that would be correct, more  
23       or less?

24          A.       Yeah, I mean, I -- I guess I'm  
25       not exactly sure what you mean by

1                               Bessembinder

2       I'm not offering legal opinions.

3               Q.       You don't think that a question  
4       of why a trader entered an order or  
5       canceled an order is a legal opinion, do  
6       you?

7               A.       To circle back to last week's  
8       hearing, the legal issue there was the  
9       trader's intent at the time of entering  
10      orders and I provided statistical evidence  
11      that was relevant to assessing intent, but  
12      I was not making any final legal conclusion  
13      about whether the law had been violated.  
14      That was not up to me.

15              Q.       I understand that. It wouldn't  
16      be.

17                      Have you ever -- you have never  
18      traded commodities, correct?

19              A.       That's correct.

20              Q.       Have you ever supervised people  
21      who traded commodities?

22              A.       No.

23              Q.       So you have never been  
24      responsible for the profit and loss  
25      performance of any one trader or group of

1 Bessembinder

2 traders, correct?

3 A. That's correct.

4 Q. Have you ever worked at a  
5 commodities brokerage firm?

6 A. No.

7 Q. You never supervised commodities  
8 brokers, correct?

9 A. That's correct.

10 Q. You have never been responsible  
11 for the profit and loss performance of a  
12 commodities broker, right?

13 A. That's correct.

14 Q. Not delving into too much  
15 personal information, but in your personal  
16 financial affairs, do you take positions in  
17 commodities or derivatives of commodities?

18 A. No. I've taken positions in the  
19 markets, but not commodities markets.

20 Q. When you say you have taken  
21 positions in the markets, what markets are  
22 you talking about?

23 A. Equities, ETFs, closed-end funds,  
24 that sort of thing.

25 Q. You have never had a broker

1                   Bessembinder

2       trading commodities to whom you were giving  
3       instructions about what to trade?

4           A.       No.

5           Q.       Have you ever provided advice to  
6       anyone on whether or why they should or  
7       should not trade a commodity?

8           A.       No. I am not in the business of  
9       providing investment advice.

10          Q.       Is there any reason why, in your  
11       personal financial affairs, you don't have  
12       a commodity broker that you work with?

13          A.       Well, as mentioned, I've never  
14       traded commodities. So therefore, no  
15       reason to bring a broker on board.

16          Q.       Is there any reason why you have  
17       never decided to dabble in trading  
18       commodities?

19          A.       Just broadly speaking, I'm not a  
20       very active trader. I've done some active  
21       trades at what I thought were opportune  
22       moments. But for the most part, I believe  
23       my comparative advantage is on the academic  
24       side. That's where I spend my time.

25          Q.       Better to leave that to the

1 Bessembinder

2 sure.

3 Q. Did you talk to -- in connection  
4 with your work in this case, did you talk  
5 with anybody who was actually a commodity  
6 trader?

7 A. In this case, no.

8 Q. Did you think about doing that?

9 A. No.

10 Q. When were you first contacted are  
11 about this case?

12 A. I'm not sure if I can give you  
13 the precise date. I was contacted late  
14 last year, and in that conversation, the  
15 attorneys mentioned that we had discussed  
16 this case once before. But I didn't  
17 actually have a memory of that so I can't  
18 pinpoint when that earlier conversation  
19 might have been.

20 Q. What were you asked to do when  
21 you were contacted late last year, the  
22 conversation that you remember?

23 A. So they refreshed my memory of  
24 what sort of case we had here, what were  
25 the issues here and I was asked if I could



1                               Bessembinder

2               Q.       I'm correct that in none of the  
3 disclosures does Mr. Eibschutz indicate  
4 that he believes he can disclose any of  
5 this information to other market  
6 participants to cause them to trade, is  
7 that consistent with your recollection?

8               A.       I mean, there were many hours of  
9 tapes, but as I sit here, I don't recall  
10 any -- I don't recall any instances along  
11 the lines of what you just said.

12              Q.       Now, Mr. Eibschutz is a broker,  
13 right?

14              A.       That's my understanding.

15              Q.       He gets paid based on people  
16 trading, right?

17              A.       I believe he would be compensated  
18 on commissions, yes.

19              Q.       So you would agree he would have  
20 an incentive to cause other market  
21 participants to enter into trades, correct?

22              A.       I believe he would have an  
23 incentive for people to trade through him  
24 so he could get the commission. He might  
25 have other incentives, but it would seem

1                               Bessembinder

2               record.

3                       (Recess)

4                       THE VIDEOGRAPHER:   The time is  
5               10:59 a.m.   We are back on the record.  
6               Video number 2.

7               Q.       Professor Bessembinder, I want to  
8               go back and talk a little bit about what  
9               you were asked to do in the case and what  
10              you undertook.   In the discussions with the  
11              CFTC or your thinking about what you might  
12              do, did you ever consider analyzing trade  
13              data?

14             A.       I didn't see a viable path where  
15             analyzing trade data would be useful in the  
16             absence of some specificity along the lines  
17             of an individual trader who might have  
18             acted on the information.

19                       But short of that, I didn't see  
20             any viable path involving data.

21             Q.       You're familiar with the RAPID  
22             and ARMADA trade data generated by the CME,  
23             correct?

24             A.       I am, yes.

25             Q.       Is in other matters, for

1                                   Bessembinder

2           A.       From my understanding of markets  
3       in combination with various discussions.

4           Q.       Discussions with who?

5           A.       With counsel, among others, but I  
6       mean, to me, it's intuitive to say that, in  
7       the context of trading, information is  
8       important if it would be considered in  
9       trading decisions. That seems very  
10      intuitive.

11          Q.       If it would be considered in  
12      trading decisions, even if it was to  
13      consider the information and decide not to  
14      trade, right?

15          A.       Yeah. I mean, you know, I  
16      believe there could be some shades of gray  
17      in importance. We might say that something  
18      that was considered but did not generate  
19      trading would be less important. I would  
20      be comfortable with that.

21          Q.       But still important?

22          A.       I mean, I wouldn't say of zero  
23      importance.

24          Q.       Well, when you reached your  
25      opinion here that all of the disclosures

1                   Bessembinder

2       were important, was it that it had to be  
3       something greater than zero importance?

4           A.       I believe you may have gone a  
5       little further than I did. I'm not sure  
6       that I said -- I'm not sure that I  
7       specifically said that every disclosure was  
8       important.

9           Q.       We are definitely going to get to  
10      that.

11                  Was it -- but sticking with  
12      whatever disclosures you did think were  
13      important, was your standard for importance  
14      anything greater than zero importance?

15          A.       Yeah, anything greater than zero  
16      I think could be categorized as important.  
17      But as I said, there could be shades of  
18      gray. Some of these disclosures were  
19      probably more important than other  
20      disclosures.

21          Q.       We will circle back right around  
22      so I don't forget it, but you looked at --  
23      you looked at -- you listened to 79 calls.

24          A.       I'll take your word for it.

25          Q.       I just confirmed it. It is 79.

1                               Bessembinder

2           A.       There was a lot of calls. That I  
3       can affirm.

4           Q.       You listened to 79 calls, looked  
5       at the associated transcripts.

6                       Did you do an assessment of how  
7       many discrete important disclosures were  
8       contained in those 79 calls?

9           A.       I did not provide such account,  
10       no.

11          Q.       Of the disclosures that you  
12       reviewed, did you conclude that any of them  
13       were not important using your definition of  
14       important?

15          A.       There were none that I could rule  
16       out importance. There were none where I  
17       could say zero probability this was  
18       important.

19          Q.       Were there some where it was a  
20       close call?

21          A.       There are shades of gray. Some,  
22       as I say, some -- it's more clear, more  
23       obvious, higher probability, if you prefer,  
24       that it was important. Others, others  
25       less.

1                               Bessembinder

2               Q.       In the draft exhibit that you  
3       prepared or otherwise, did you attempt to  
4       catalog by level of importance --

5               A.       No.

6               Q.       -- the disclosures?

7               A.       No. I didn't.

8               Q.       How did you assess each  
9       disclosure from -- in terms of determining  
10      its importance?

11              A.       Well, I tried to first just  
12      document the facts as best I could, what  
13      was disclosed. Then beyond that, the two  
14      attributes that I -- or three maybe I  
15      should say, the attributes I focused on  
16      were -- there may be more than three. Let  
17      me just go through them.

18                      Was it economically large, was  
19      something I considered. Did it occur in a  
20      market that's relatively illiquid, slice of  
21      the market, I should say. I understand the  
22      point that each of these markets is part of  
23      a broader complex of energy instruments.  
24      But in any event, the slice of the market,  
25      the segment of the market where this

1                   Bessembinder

2       trading occurred, was it a less liquid  
3       segment of the market.

4                   Also, did it involve traders who  
5       were potentially viewed as skilled traders.  
6       And then were there multiple revelations.  
7       So those four dimensions were all relevant  
8       to the discussion.

9           Q.       And those dimensions that you  
10      just mentioned, did you come up with those  
11      on your own or are these dimensions that  
12      have been accepted in the academic field as  
13      the proper dimensions to examine when  
14      assessing importance?

15          A.       I don't think there is a  
16      template. To my knowledge, there is no  
17      template in the academic literature of how  
18      to determine what's an important piece of  
19      information, other than things that are  
20      really circular, like it is important if it  
21      is value-relevant, which -- anyway, I don't  
22      think there is a template out there.

23                  So this assessment of importance  
24      was based on my view of the literature, my  
25      own specific research that was relevant,

1                               Bessembinder

2       and my interactions with traders over the  
3       years.

4               Q.       Was -- again, I apologize if I  
5       asked this question and I want to make sure  
6       get it, in terms of the dimensions that you  
7       just identified, how did you assess each  
8       disclosure on those four dimensions?

9               A.       Well, you have seen my report, so  
10       you know I developed measures of the  
11       notional principle of the -- involved with  
12       a disclosure. I also assessed the  
13       liquidity of segments of the market based  
14       on average daily trading volume, provided  
15       some counts of cases where there were  
16       multiple disclosures for an individual  
17       firm, and then just on the skilled trader  
18       thing, I just pointed to one or two  
19       examples where at least some participants  
20       believe that some traders in these markets  
21       were unusually skilled.

22              Q.       Did all of the disclosures hit on  
23       at least one of your four criteria?

24              A.       In shades of gray.

25              Q.       Did you record or otherwise



1 Bessembinder

2 that.

3 Q. For those disclosures that aren't  
4 mentioned in your report, is there any work  
5 product that would help us understand your  
6 methodology in determining if the  
7 disclosure was important?

8 A. I think I mentioned I had a draft  
9 exhibit and it is incomplete and not  
10 entirely precise, but I had a draft exhibit  
11 of each time I listened to a call, I made  
12 some notes about what I thought I was  
13 hearing in the call.

14 Q. You mentioned that there were no  
15 disclosures that you could rule out in  
16 terms of assessing their importance.

17 A. I don't think I ruled any out.  
18 As best I recall, I don't think I said,  
19 this one I'm sure is not important. I  
20 don't think I ever made a statement like  
21 that.

22 Q. The methodology -- strike that.  
23 The way you approached it, did  
24 you believe that you needed to reach  
25 certainty that something was not important

1                               Bessembinder

2       before you ruled it out?

3               A.       Certainty that it was not  
4       important? I guess if I was going to  
5       definitively rule it out, it would require  
6       certainty. There are shades of gray and,  
7       you know, maybe you are going to ask me,  
8       but I can't put specific probabilities  
9       on -- I've used phrases like "substantial  
10      likelihood," but can I translate that into  
11      a specific probability, save you some time  
12      and effort, no, I can't.

13            Q.       But you believe if we went  
14      through every 79 calls -- all 79 calls,  
15      your opinion, it is substantially likely  
16      that it would be important?

17            A.       There are shades of gray. I'm  
18      not sure that I referenced all -- I'm not  
19      sure that I referenced all 79 calls in my  
20      report. I just -- I may have. I'm not  
21      absolutely certain. I can't remember  
22      whether I referenced all 79.

23            Q.       I don't think you did. You  
24      referenced the 79, but I don't think you --  
25      well, I won't put words in your mouth. Do

1                               Bessembinder

2       in your own mind as explicit. How did you  
3       think about it? I get the substantially  
4       likely point. That's referring to is one  
5       trader substantially likely. But is it one  
6       trader is it -- it's not one, it's not all,  
7       where is it?

8                       MR. MacGREGOR: I will object to  
9       the form.

10       A. I didn't have a specific number  
11       in mind. If -- if it was phrased in terms  
12       of, well, what if there is only one trader  
13       who would act on this, I guess my response  
14       would be, well, one is enough to establish  
15       it's important.

16       Q. I have this outline and I go back  
17       to it once in a while and realize I don't  
18       know where I am because I asked a lot of  
19       different questions.

20       A. I'm sympathetic. As someone who  
21       sometimes lectures for four hours, I  
22       understand the problem with losing one's  
23       place in the discussion. It hurts your  
24       teaching evaluations, by the way, when it  
25       happens.

1 Bessembinder

2 market participants who were the subject of  
3 these disclosures?

4 A. Right. As I created this draft  
5 exhibit, I was taking down names,  
6 companies, individual traders, whatever was  
7 revealed in individual calls.

8 Q. Did you do any analysis or  
9 testing regarding whether the market  
10 participants whose trades were disclosed  
11 were engaging in similar trading patterns  
12 as reflected in the disclosures?

13 A. I did not.

14 Q. Did you do any analysis whether  
15 the market participant's prior day trading  
16 is predictive of their future trading  
17 patterns?

18 A. No. I didn't really think I was  
19 well-positioned to make predictions about  
20 their future trading.

21 Q. Why not?

22 A. To extract value-relevant or  
23 price-relevant information from these  
24 disclosures would require certain skills  
25 and I think professional traders would be

1                               Bessembinder

2       much more likely to possess those skills  
3       than myself as somebody who doesn't trade.

4               Q.       Just to probe that a little bit,  
5       so you were looking at the disclosures --  
6       strike that.

7                       When you were looking at the  
8       disclosures, it didn't occur to you here is  
9       how I or a market participant would use  
10      this information?

11              A.       I mean I -- safe to say  
12      personally, I would not have known how to  
13      trade off of those disclosures. But I'm  
14      not sure I'm the relevant person for this  
15      test.

16              Q.       I understand.

17                      MR. HOGAN: We have been going  
18      about another hour. Why don't we go  
19      off the record.

20                      THE VIDEOGRAPHER: The time is  
21      12:04 p.m. We are going off the  
22      record.

23                      (Luncheon recess)

24                      (Continued on next page)

25

1                               Bessembinder

2           A.       I do. I do mention those  
3 packages of options if we want to use that  
4 phrase.

5           Q.       To just be real direct about it,  
6 do you consider those packages of options  
7 to be trading strategies the way you think  
8 about it and define?

9           A.       I think they can be an element of  
10 a trading strategy and they can reveal  
11 elements of a trading strategy.

12          Q.       Not quite my question. Do you  
13 consider those packages of options to be  
14 trading strategies the way you have defined  
15 it and thought about it?

16          A.       So I really don't know quite how  
17 to answer that. I don't think a single  
18 trade is a strategy. A single trade is an  
19 element of a strategy, a portion of a  
20 strategy. A single trade might reveal  
21 something about strategies.

22          Q.       You have -- have you studied  
23 trading strategies?

24          A.       Yes.

25          Q.       Using your definition of a

1                               Bessembinder

2       more important if the trades involved are  
3       larger.

4           A.       You're reading it, so I presume  
5       you're reading correctly.

6           Q.       Yeah, that sounds like what you  
7       would write, right?

8           A.       It sounds like what I would  
9       write.

10          Q.       So what constitutes a large  
11       trade?

12          A.       This is a -- this is another  
13       shades of gray. There is no black, white  
14       cut-off. Shades of gray for what's large.

15          Q.       Is there any academic literature  
16       or any studies that attempt to put any  
17       parameters around what constitutes a  
18       "large" trade?

19          A.       There have been studies where  
20       people have tried to make out large trades.  
21       For example, one thing that comes to mind  
22       is in years past, people used to use the  
23       NYSE's definition of a block trade which,  
24       if my memory is correct, was 10,000 shares.

25                    So I have a recollection there

1                   Bessembinder

2       were some papers that broke out 10,000  
3       trade shares as large trades. But again,  
4       it's somewhat arbitrary. It is more  
5       accurately shades of gray.

6               Some trades are bigger than  
7       others. To say 10,000 is big and 9,999 is  
8       small seems a little artificial.

9           Q.     What standard did you use in this  
10       case to determine what was and was not a  
11       large trade?

12          A.     There was shades of gray. If  
13       there was a lot of contracts, it was a  
14       larger trade. If there were fewer  
15       contracts, it was a smaller trade.

16          Q.     Relative to zero contracts?

17          A.     Or even relative to each other.

18               If there was 15,000 contracts,  
19       and other things equal, that's a bigger  
20       trade than if there is a thousand  
21       contracts.

22          Q.     We have another point of complete  
23       agreement. I agree with that point.

24          A.     That's good we can find a few of  
25       those.



1                               Bessembinder

2               Q.       Can you tell us anything more  
3       about the standard -- the criteria that you  
4       applied to conclude that certain trades  
5       were large trades?

6               A.       Again, it is shades of gray and I  
7       think we could probably agree it was  
8       somewhat subjective. But if there was a  
9       lot of contracts, it was a large trade.

10              Let me phrase it differently. If  
11     someone was asserting these were all small  
12     trades -- and I don't know if anybody has  
13     ever asserted that. I was providing  
14     counter-examples. Trades that most people  
15     would not consider to be small.

16             Q.       When you say that trades that  
17     most people would not consider to be small,  
18     what's your basis for assessing what most  
19     people would consider to be small and large  
20     trades?

21             A.       I mean, that's a figure of  
22     speech. Let me pick a number out of the  
23     air. Let's say a given trade involved 90  
24     million and let's say it is a  
25     delta-adjusted number just for discussion.

1 Bessembinder

2 if you see enough of the lines, you might  
3 be able to make inferences about the bigger  
4 pattern.

5 Q. You talked about the hedging  
6 examples. Even including the hedging  
7 example, were you able to come to any  
8 informed views about any market  
9 participant's aggregate position based on  
10 these disclosures?

11 A. Well, definitely not me, but  
12 again, I don't think I'm the relevant party  
13 for this discussion.

14 Q. Well, did you consult with anyone  
15 to see if anybody could come to any  
16 informed views about any market  
17 participant's aggregate position based on  
18 these disclosures?

19 A. I did not consult with anybody.

20 Q. In your report and today, you  
21 have discussed the concept of skilled  
22 traders.

23 A. Yes.

24 Q. What -- I don't have a reference  
25 in your report, I'm sure it is in there

1                               Bessembinder

2                       To go back to the -- go back to  
3       the statement I made earlier about my  
4       conversations with bond traders, if there  
5       is a series of large bond trades reported  
6       on Trace, that, in and of itself, doesn't  
7       tell you who traded.

8                       But I do hear statements along  
9       the lines of, well, that might -- must have  
10      been Morgan Stanley or something like that.

11                      People who are close to these  
12      markets are able to draw inferences that I,  
13      as an outsider, cannot draw or,  
14      respectfully, that you cannot draw.

15              Q.      No need to be polite about it. I  
16      know I can't.

17              A.      So there is another thing we  
18      agree on. You and I can't do this.

19              Q.      We can't do it.

20                      So in your assessment of what's  
21      important, did you assume that market  
22      participants would have information and  
23      make inferences that you have no ability to  
24      assess yourself?

25              A.      I believe it is very plausible

1                               Bessembinder

2       and likely that there could be market  
3       participants that could make inferences  
4       that I could not make, yes.

5           Q.       And did your understanding or  
6       your belief that there were market  
7       participants who could likely make  
8       inferences that you could not make, did you  
9       factor that into your overall assessment  
10      about whether or not these disclosures  
11      would be important to market participants?

12          A.       It was relevant. I mean, to put  
13      it differently, if the standard had been  
14      could I make inferences that would lead to  
15      desirable trading, if that was the  
16      standard, this would be an easy one, the  
17      answer would be no.

18          Q.       I understand. OK.

19          A.       I didn't know, I didn't know they  
20      laced your outline with jokes.

21          Q.       I'll let you in on it. I'll let  
22      you in on it. I -- just to show you how  
23      all over the top of this market I am, John  
24      Arnold actually runs Centaurus, right?

25          A.       I believe he did before he

1                               Bessembinder

2       strategies would require significantly more  
3       disclosures than are at issue in that  
4       case -- in this case, can we agree on that?

5           A.       No.   Particularly for somebody  
6       who themselves is smart and skilled and  
7       already has some degree of knowledge of  
8       what's going on in these markets, I would  
9       not dismiss the possibility that these  
10      disclosures would be helpful in  
11      reverse-engineering.

12          Q.       So taking them individually or  
13      collectively, were you able to even begin  
14      to think about what trading strategies were  
15      represented of any particular market  
16      participant?

17          A.       Me, no.

18          Q.       By virtue of these disclosures?

19          A.       Sorry for cutting you off.   For  
20      me, no.   I think we already established  
21      that more relevant is what other  
22      intelligent and knowledgeable people who  
23      participate in these markets regularly,  
24      what they could have.   That's the relevant  
25      question.

1 Bessembinder

2 Q. Is there any academic literature  
3 assessing the ability of intelligent and  
4 knowledgeable people to reverse-engineer a  
5 trading strategy?

6 A. I'm not going to say no. I'm  
7 just going to say I can't put my finger on  
8 a paper that has done so.

9 Q. You didn't rely on any such  
10 academic study in the course of rendering  
11 your opinions in this case?

12 A. That's correct.

13 Q. OK. Coming back to staleness,  
14 apart from the idea of reverse-engineering  
15 a trading strategy, can you give me any  
16 other sense for your view of when the  
17 disclosure of a trader identity would  
18 become stale?

19 A. Again, I can't give you any  
20 specific threshold by which it would be  
21 stale.

22 But in addition to  
23 reverse-engineering strategies, we have the  
24 issue of whether disclosures potentially  
25 help to forecast future trades. So the

1                               Bessembinder

2       if we had that in front of us, we could  
3       determine whether I aggregated these.  
4       Going from memory -- but I think I did  
5       aggregate if it was the -- if it was a  
6       quantity revealed in a single call, I think  
7       I aggregated those.

8               Q.       Even if it was different dates?

9               A.       I'm not absolutely sure, but I  
10       believe I may. So it would be something  
11       along the lines of "X" hundred were  
12       revealed in this call and how big is that  
13       by comparing to daily volume.

14              Q.       And you anticipated my next  
15       question. You said you compared it to the  
16       average daily volume. You compared it to  
17       the average daily volume of that contract,  
18       correct?

19              A.       Yes.

20              Q.       And was there some threshold you  
21       had in mind -- we covered it before, but  
22       let me ask you, now that you are looking at  
23       it, was there some threshold you had in  
24       mind where I now believe this is a large  
25       trade disclosure?

1                               Bessembinder

2           A.       No, as I said, large versus small  
3       is not an on/off variable, it is shades of  
4       gray.

5           Q.       How about skilled traders, did  
6       any of the participants here strike you as  
7       skilled traders?

8           A.       I'm not sure that individual  
9       traders were identified in this call. I  
10      see firms. I see firms, but not individual  
11      traders.

12                   Now on the issue of who is a  
13      skilled trader, I think market participants  
14      are better, better positioned to make that  
15      assessment than I am.

16                   Obviously, John Arnold is  
17      somebody we all heard about, but who else  
18      might be skilled, I think that's a --  
19      market participants are better situated for  
20      that than I am.

21          Q.       So when you were applying your  
22      skilled trader dimension, how did you do  
23      that since you don't yourself have a view  
24      of who are skilled traders?

25          A.       Yeah, I mean, I -- I provided a



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A. Spell the name.

Q. Spelled V-O-E-T-M-A-N-N?

A. I can't place the name, no.

Q. Have you talked with anyone, in your work on this case, with someone who has been asked to do an event study with respect to this case?

A. I can't identify, no, I can't think of anyone who has done an event study focused on this case. Don't know of any.

Q. Here is a question I think I know the answer to, but I'm going to ask anyway. Did you ever take the series 3 exam?

A. I did not actually.

Q. And you know what the series 3 exam is?

A. I believe it is a brokerage exam. But I've not taken it.

Q. You spent some time talking about how you're not qualified to draw inferences from some of the information that has been disclosed from some of these conversations, but you believe a trader would, is that accurate?